



November 5, 2013

State of Michigan
House of Representatives
Committee on Government Operations
Anderson House Office Building
124 North Capitol Avenue
P.O. Box 30014
Lansing, MI 48909-7514

RE: Statement in Opposition to SB 652 (Reassignment of Court of Claims)

Dear Chairman Lund and Committee Members:

The Michigan Association for Justice is strongly opposed to the Court of Claims legislation pending before your Committee, passed through the Senate as SB 652 (2013). We respectfully request that you view the adverse impact of this legislation in its larger context and vote in opposition. SB652 would vastly enlarge Court of Claims jurisdiction and:

Eliminate the right to a jury trial in a large number of cases including civil rights claims under the ELCRA.

Further eliminate the right to jury trials by expanding the definition of the State to include individual employees, cases that are currently under the jurisdiction of the circuit courts.

Promote secrecy in government and shield the State from FOIA and Open Meetings Act cases.

The MAJ is a voluntary organization that represents over 1,600 attorneys in Michigan. Our membership is comprised of attorneys from all areas of the law including administrative agency, trial court and appellate practice. A number of our members, including ourselves, actively practice in the Court of Claims in various aspects of litigation and have direct insight into the issues before your Committee. As a professional legal association representing a large cross-section of the bar, the MAJ recognizes its obligation to assist the Legislature with important issues of law that would substantially affect the orderly administration of justice in the courts of this state.

The MAJ has carefully considered SB652 including the purported rationale claimed by its proponents together with the position statements in opposition to the Bill from a number of bar associations including the Negligence Law and Appellate Practice Sections of the State Bar of Michigan, and the Oakland County Bar Association. We join those distinguished bipartisan



organizations in strongly opposing SB652. The enactment of SB652 would create a constitutional crisis.

The reassigned and enlarged Court of Claims jurisdiction as proposed in §6419(1)(a) and (b) to include all statutory and equitable claims would promote secrecy in government and provide a shield for the State from FOIA and Open Meetings Act cases. Further, the enactment of this provision would eliminate the right to a jury trial in a large number of cases including, among many others, the Elliott Larsen Civil Rights Act (ELCRA), MCL 37.2101, the Persons with Disabilities Civil Rights Act (PDCRA), MCL 37.1101 and the Whistleblowers Protection Act (WPA), MCL 15.361. As well the legislation would strip the right to jury trial in any action brought by the State against an individual, group or business who brings an action in the Court of Claims. §6419(1)(b)

Significantly, the expansive definition of "the State" proposed by § 6419(7) to include individual employees would eliminate the right to jury trial against these defendants. Under existing law these cases are under the jurisdiction of the circuit courts, not the Court of Claims. Further, the immediate transfer of these cases could result in retroactive application of this deprivation of rights and would be tantamount to enactment of an *ex post facto* law.

Reassignment of the Court of Claims from trial judges to certain hand-picked Court of Appeals judges, operating in a system not designed for this role, is contrary to every notion of fundamental fairness at the core of our state and nation. Even beyond the due process and separation of powers issues self-evident with this agenda driven scheme, the true impact of this Bill is fraught with adverse consequences for Michigan citizens.

Reassignment of the Court of Claims to the Court of Appeals is certain to have an adverse fiscal outcome on governmental operations, and is directly contrary to responsible and efficient use of judicial resources. It would increase the likelihood of multiple cases being litigated at the same time versus consolidation of all claims in one action. In cases involving claims against multiple parties, both State and private plaintiffs would file their private claims in Circuit Court to preserve their right to jury trial and be compelled to file a separate case in the Court of Appeals regarding State related claims. The net result would be duplicative litigation and excessive strain on judicial resources.

The Bill is also contrary to the public interest in preservation of a stable system of civil justice, access to judicial resources by litigants and counsel, and would have a negative overall impact on Michigan's *juris prudence*.

Contrary to the testimony presented in support of the Bill, the Ingham County Circuit Court is NOT the only Court that handles Court of Claims cases. Indeed, Court of Claims cases are adjudicated by circuit courts across the state under the consolidation provisions of §6421. The Bill seeks to abrogate the stable, efficient joinder system of §6421 and replace it with joinder only if all parties stipulate, even those co-defendants whose interests may be directly opposite of the state.



The Bill would have the disruptive effect of retroactively transferring these pending cases from counties around the state. This would adversely impact litigants, lawyers and the administration of justice. Significantly, it would mean that parties would be forced litigate issues in multiple venues and proceed to disjointed appeals.

And on the other side of that double-edged sword, through the application of collateral estoppel and other legal doctrines, the Bill would serve to disenfranchise some claimants, sometimes the state, from being able to have full access to justice. In some cases, the right to jury trial against the individual co-defendant would be eliminated once the non-consolidated bench trial makes a determination on certain issues, thus *de facto* depriving citizens of their fundamental right to jury trial under Article I, § 14 of the Michigan Constitution.

Enactment of SB 652 would cause significant adverse consequences to due process. It abrogates meaningful appellate review because the appeal of a Court of Claims ruling would be from a Court of Appeals judge acting as a Court of Claims judge to a Court of Appeals panel. SB 652 fails to recognize or account for potential multiple impacts on other statutes. For example, it fails to consider the impact on MCL 600.308 (final judgments Court of Claims appealable by right to the Court of Appeals) or the immediate application of MCL 600.6431 (Court of Claims notice provision, pleading requirements) which would likewise serve to deprive Michigan citizen's of meritorious claims and deprive them of due process under law.

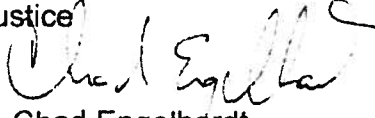
The MAJ echoes the offer of the State Bar sections and the OCBA to work with the stakeholders to develop intelligent, principled means for addressing the concerns identified by the Bill's sponsor and the Sterling Corporation during the Senate Judiciary hearings.

We are also concerned about the procedural manner in which this Bill has been handled legislatively with virtually no time for those impacted to respond in the Senate and little in the House. We respectfully request that you allow for additional hearings and input from lawyers, judges, litigants and the general public who may be affected by the proposed changes so that you can make an informed decision that is in the true best interest of your constituents.

We look forward to working with you on this important Bill and to providing you with additional information at the hearing.

Respectfully Submitted,
Michigan Association for Justice


Stephen Goethel
Executive Board Member


Chad Engelhardt
Executive Board Member



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Reassignment of the Court of Claims to the Court of Appeals is certain to have an adverse fiscal outcome on governmental operations, and is directly contrary to responsible and efficient use of judicial resources. The Bill is also contrary to the public interest in preservation of a stable system



of civil justice, access to judicial resources by litigants and counsel, and would have a negative overall impact on Michigan's *juris prudencia*.

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Bill to move the Court of Claims has many flaws.

Legislation to move Michigan's Court of Claims from Ingham County Circuit Court to the Michigan Court of Appeals should be slowed down. In its current form, the bill could do financial harm to Ingham County and may well provide less convenient, slower process for those pursuing legal action against the state.

The bill raced through the state Senate last month and Gongwer News Service reported the House may act quickly this week. Yet critics have identified several flaws that should be carefully addressed, not ignored in a race to pass SB 652.

Ingham County's Circuit Court judges currently hear cases involving claims against the state worth more than \$1,000. That's about 100 cases a year. But critics believe language in SB 652 expands the Court of Claims' jurisdiction beyond its current definition and would result in many cases now handled in local circuit courts being sent to one of four Court of Claims judges who would be assigned within the Court of Appeals, including civil rights, environmental, open meetings and freedom of information cases.

Appellate judges are paid more than circuit judges. Even if the Court of Appeals has seen a falling caseload in recent years, such an expansion of the Court of Claims could well cost the state additional money. Also, appellate attorneys worry that the new Court of Claims will be slower to resolve cases.

Indeed, the State Bar of Michigan's appellate section opposes the bill. One concern is that circuit courts are trial courts, while appellate courts are not. Opponents also note that using Court of Claims judges across the state may not create the geographic convenience that its supporters tout. Since the judge for each case will be selected by a blind draw, someone who files a Court of Claims case close to home may find the case assigned to a judge who is far away. Lansing is a central location and offered predictability that the new system would not.

Finally, the impact on Ingham County, which budgets about \$450,000 for Court of Claims activities, should be considered. While the state reimburses costs, scaling back on short notice will be difficult, creating an unfair financial burden to Ingham County's taxpayers.

GOP strategists are seizing an opportunity to get the Court of Claims away from a Circuit Court bench that, while elected on nonpartisan ballots, is perceived by some as favoring Democrats and liberal causes. The speed at which this bill is moving suggests a political agenda rather than a better government agenda.

It falls to Gov. Rick Snyder to insist that the bill doesn't create unpleasant consequences for litigants, add extra costs for the state or impose a financial penalty on a county that has hosted the Court of Claims for five decades.

An LSJ editorial